H1

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: MIAMI, FLORIDA Date: JAN 22 2002

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(g) of the Immigration and Nationality Act, 8 U.S.C. 1182(g).

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(i), for having a communicable disease of public health significance. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(g) of the Act, 8 U.S.C. 1182(g), in order to remain in the United States and adjust his status to that of a lawful permanent resident under the Haitian Refugee Immigrant Fairness Act of 1998, Pub. L. 105-277 (HRIFA).

The acting district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

The record reflects that the applicant was found on September 10, 1999 to have tested positive for Human Immunodeficiency Virus (HIV) Infection. At the time of his application for adjustment of status under HRIFA, the applicant claimed that he was the unmarried son of St. Gerard Lauriston, a lawful permanent resident of the United States. The birth certificate that the applicant submitted to establish the relationship was recorded 36 years after the applicant's birth. The applicant submitted genetic testing results to establish the relationship but those results indicated a 0% likelihood of St. Gerard Aluriston being the applicant's father.

On appeal, counsel requests an additional 90 days after filing the appeal for the applicant to have an opportunity to have his alleged biological father retake the blood test to prove their family relationship. Counsel has not shown good cause for requesting a second test. Therefore, counsel's request for additional time is denied. Since more than four months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
>
> (1) HEALTH RELATED GROUNDS.-
>
> (A) IN GENERAL.- Any alien-
>
> (i) who is determined (in accordance with

[redacted]

> regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,
>
> (B) WAIVER AUTHORIZED.-For provisions authorizing waiver of certain clauses of subparagraph (A), see subsection(g).

Section 902 of HRIFA provides that an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act is ineligible for adjustment of status under HRIFA unless he or she receives a waiver of that ground of inadmissibility.

Section 212(g)(1) provides that the Attorney General may waive the application of subsection (a)(1)(A)(i) in the case of any alien who-

> (A) is the spouse or the unmarried son or daughter, or the minor lawfully adopted child of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or
>
> (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa;
>
> in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulations prescribe;

The approval of an application for a waiver of inadmissibility under section 212(g) of the Act equates in this case to a waiver of the permanent bar to admission imposed upon the applicant by section 212(a)(1)(A)(i) of the Act. Congress provided for such a waiver but limited its application by requiring, in each case, a showing of the requisite familial relationship.

The applicant has failed to establish that he has a qualifying relative who would experience extreme hardship if he is removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

It should be noted that Congress did not intend that a waiver under section 212(g) be granted merely due to the existence of a qualifying relationship since it stipulated other terms, conditions, and controls that also have to be met, besides making

the waiver discretionary. This Service bears the responsibility of determining, on a case by case basis, whether a person found to be inadmissible pursuant to section 212(a)(1)(A)(i) should be granted a waiver.

Current Service policy dictates that the discretion of the Attorney General shall not be used in HIV positive cases unless the applicant can establish that: (1) the danger to the public health of the United States created by his/her admission to the United States as an immigrant is minimal; (2) the possibility of the spread of infection created by his/her admission to the United States as an immigrant is minimal; and (3) should he/she be admitted as an immigrant, there will be no cost incurred by any level of government agency of the United States without prior consent of that agency.

In proceedings for application for waiver of grounds of inadmissibility under section 212(g) of the Act, the burden of proving eligibility remains entirely with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The dismissal of the appeal does not preclude the applicant from filing a new application with the required fee and in accordance with instructions, supported by documentation to establish that he has a qualifying relationship and warrants a waiver as a matter of discretion in accordance with Service policy.

ORDER: The appeal is dismissed.